



129 JAN 2004

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Robert M. Barrett
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P.O. Box 1135
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In re Application of
AFFOLTER, et al.
U.S. Application No.: 09/936,367
PCT No.: PCT/EP00/01796
Int. Filing Date: 02 March 2000
Priority Date: 11 March 1999
Attorney Docket No.: 112843-029

DECISION ON PETITIONS

UNDER 37 CFR 1.181

AND 1.137(b)

For: EXPRESSION OF PROTEOLYTIC
ENZYMES IN KOJI MOLD IN THE
PRESENCE OF CARBON SOURCES

This decision is in response to applicant's correspondence filed 31 July 2003 which is being treated as a petition under 37 CFR 1.181 and "Petition For Revival of an Application For Patent Abandoned Unintentionally Under 37 CFR 1.137(b)" filed 22 January 2004. No petition fee is due for the petition under 37 CFR 1.181. Applicant included authorization to charge the \$1330.00 petition to revive fee to Deposit Account No. 02-1818.

BACKGROUND

On 02 March 2000, applicant filed international application PCT/EP00/01796, which claimed priority of an earlier application filed 11 March 1999. A Demand for international preliminary examination, in which the United States was elected was filed prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 11 September 2001.

On 11 September 2001, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied by the requisite basic national fee as required by 35 U.S.C. 371(c)(1); an unexecuted declaration; a copy of the international search report and a First preliminary amendment.

On 30 October 2001, applicant was mailed a "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371" (Form PCT/DO/EO/905) informing applicant of the need to provide an executed oath or declaration of the inventors, in compliance with 37 CFR 1.497(a) and (b), identifying the application by the International application number and international filing date. Applicant was also informed of the need to provide a nucleotide and/or amino acid sequence disclosure in compliance with 37 CFR 1.821-1.825. Applicant was afforded two months to file the response.

01/30/2004 09:00:00 00000150 021616 09936367

On 23 January 2002, applicant responded with an executed combined declaration and power of attorney.

On 30 May 2002, the present application became abandoned as to the United States for failure to fully respond to the Form PCT/DO/EO/905 mailed 30 October 2001.

On 31 July 2003, applicant filed copies of papers purportedly filed 28 March 2003 including a paper sequence listing and diskette for the present application.

On 22 January 2004, applicant filed the present petition to revive pursuant to 37 CFR 1.137(b).

DISCUSSION

I. Petition Under 37 CFR 1.181

The best evidence of what was actually received by the Office is a postcard receipt containing a specific itemization of all the items being submitted. See MPEP 503. Applicant's 31 July 2003 filing includes a copy of a date-stamped postcard receipt. The postcard identifies the application by applicant, application number and docket number. Among the items listed on the receipt are: "6. Sequence Listing Statement (1 page); 7. Sequence Listing Document (3 pages); and 8. Diskette Containing Computer Readable Form of Sequence Listing (1 diskette)" The receipt is stamped "DT13 Rec'd PCT/PTO 28 MAR 2003." Thus, it is clear that applicant filed a these items on 28 March 2003. As such, it is proper to accept the papers filed on 31 July 2003 as having been filed 28 March 2003. Thus, it is proper to grant applicant's petition under 37 CFR 1.181.

II. Petition Under 37 CFR 1.137(b)

A petition under 37 CFR 1.137(b) requesting that the application be revived on the grounds of unintentional abandonment must be accompanied by (1) the required reply, (2) the petition fee required by law, (3) a statement that the, "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional" and (4) any terminal disclaimer and fee pursuant to 37 CFR 1.137(c) (where required).

With regard to Item (2), applicant included authorization to charge the \$1330.00 petition fee to Deposit Account No.: 02-1818.

As to Item (3), applicant's statement that "the entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional" satisfies Item (3).

With regard to Item (4), the terminal disclaimer is not required since this application was filed after 08 June 1995.

Thus, applicant has satisfied Items (2) - (4) above.

However, with regard to Item (1), the proper response was the required sequence listing pursuant to 37 CFR 1.821-1.825. The computer readable form filed 31 July 2003 (held to have been filed 28 March 2003 per the above) was found to be non-compliant and a corrected diskette is needed. (See attached copy of CRF Problem Report.) Accordingly, the proper reply has not been furnished.

For the reasons stated above, the petition for revival cannot be granted at this time and the application remains abandoned.

CONCLUSION

Applicant's petition under 37 CFR 1.181 is GRANTED.

Applicant's petition under 37 CFR 1.137(b) is DISMISSED.

This application remains abandoned as to the United States of America.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.137(b)." No additional petition fee is required.

Please direct further correspondence with respect to this matter to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



Derek A. Putonen
Attorney Advisor
Office of PCT Legal Administration
Tel: (703) 305-0130
Fax: (703) 308-6459

#7

CRF Errors Edited by the STIC Systems Branch

Serial Number: 09/936,367

CRF Edit Date: 12/11/03
Edited by: KZ

ENTERED

_____ Misaligned nucleic acid/amino acid numbers/text in cases where the sequence text "wrapped" to the next line

_____ Corrected the SEQ ID NO. Sequence numbers edited were:

_____ Inserted or corrected a nucleic number at the end of a nucleic line. SEQ ID NO's edited:

 ✓ Deleted: ✓ invalid beginning/end-of-file text ; _____ page numbers

_____ Inserted mandatory headings/numeric identifiers, specifically:

_____ Moved responses to same line as heading/numeric identifier, specifically:

_____ Other: _____



PCT

RAW SEQUENCE LISTING

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PATENT APPLICATION: US/09/936,367

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L:10 M:271 C: Current Filing Date differs, Replaced Current Filing Date



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Does Not Comply
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98 <210> SEQ ID NO: 2

99 <211> LENGTH: 431

100 <212> TYPE: PRT

101 <213> ORGANISM: Aspergillus oryzae

103 <400> SEQUENCE: 2

104 Met Pro Pro Pro Ala Ser Ser Val Asp Phe Thr Asn Leu Leu Asn Pro

RAW SEQUENCE LISTING

DATE: 12/11/2003

PATENT APPLICATION: US/09/936,367

TIME: 11:13:11

Input Set : A:\PTO.AMC.txt

Output Set: N:\CRF4\12082003\I936367.raw

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105      1              5              10              15
107 Gln Asn Asn Glu Thr Gly Ser Ala Pro Ser Thr Pro Val Asp Ser Ser
108              20              25              30
110 Lys Ala Pro Ser Thr Pro Ser Ser Thr Gln Ser Asn Ser Thr Met Ala
111              35              40              45
113 Ser Ser Val Ser Leu Leu Pro Pro Leu Met Lys Gly Ala Arg Pro Ala
114              50              55              60
116 Thr Glu Glu Ala Arg Gln Asp Leu Pro Arg Pro Tyr Lys Cys Pro Leu
117 65              70              75              80
119 Cys Asp Arg Ala Phe His Arg Leu Glu His Gln Thr Arg His Ile Arg
120              85              90              95
122 Thr His Thr Gly Glu Lys Pro His Ala Cys Gln Phe Pro Gly Cys Thr
123              100              105              110
125 Lys Arg Phe Ser Arg Ser Asp Glu Leu Thr Arg His Ser Arg Ile His
126              115              120              125
128 Asn Asn Pro Asn Ser Arg Arg Ser Asn Lys Ala His Leu Ala Ala Ala
129              130              135              140
131 Ala Ala Ala Ala Ala Ala Gly Gln Gly Gln Glu Asn Ala Met Val Asn
132 145              150              155              160
134 Val Thr Asn Ala Gly Ser Leu Met Pro Pro Pro Thr Lys Pro Met Thr
135              165              170              175
137 Arg Ser Ala Pro Val Ser Gln Val Gly Ser Pro Asp Val Ser Pro Pro
138              180              185              190
140 His Ser Phe Ser Asn Tyr Ala Gly His Met Arg Ser Asn Leu Gly Pro
141              195              200              205
143 Tyr Ala Arg Asn Thr Glu Arg Ala Ser Ser Gly Met Asp Ile Asn Leu
144              210              215              220
146 Leu Ala Thr Ala Ala Ser Gln Val Glu Arg Asp Glu Gln His Phe Gly
147 225              230              235              240
149 Phe His Ala Gly Pro Arg Asn His His Leu Phe Ala Ser Arg His His
150              245              250              255
152 Thr Gly Arg Gly Leu Pro Ser Leu Ser Ala Tyr Ala Ile Ser His Ser
153              260              265              270
155 Met Ser Arg Ser His Phe His Glu Asp Glu Asp Gly Tyr Thr His Arg
156              275              280              285
158 Val Lys Arg Ser Arg Pro Asn Ser Pro Asn Ser Thr Ala Pro Ser Ser
159              290              295              300
161 Pro Thr Phe Ser His Asp Ser Leu Ser Pro Thr Pro Asp His Thr Pro
162 305              310              315              320
164 Leu Ala Thr Pro Ala His Ser Pro Arg Leu Arg Ser Leu Gly Ser Ser
165              325              330              335
167 Glu Leu His Leu Pro Ser Ile Arg His Leu Ser Leu His His Thr Pro
168              340              345              350
170 Ala Leu Ala Pro Met Glu Pro Gln Pro Glu Gly Pro Asn Tyr Tyr Ser
171              355              360              365
173 Pro Ser Gln Ser His Gly Pro Thr Ile Ser Asp Ile Met Ser Arg Pro
174              370              375              380
176 Asp Gly Thr Gln Arg Lys Leu Pro Val Pro Gln Val Pro Lys Val Ala
177 385              390              395              400

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RAW SEQUENCE LISTING

DATE: 12/11/2003

PATENT APPLICATION: US/09/936,367

TIME: 11:13:11

Input Set : A:\PTO.AMC.txt

Output Set: N:\CRF4\12082003\I936367.raw

179	Val	Gln	Asp	Met	Leu	Asn	Pro	Ser	Ala	Gly	Phe	Ser	Ser	Val	Ser	Ser
180					405					410					415	
182	Ser	Thr	Asn	Asn	Ser	Val	Ala	Gly	Asn	Asp	Leu	Ala	Glu	Arg	Phe	
183				420					425					430		

VERIFICATION SUMMARY

DATE: 12/11/2003

PATENT APPLICATION: US/09/936,367

TIME: 11:13:12

Input Set : A:\PTO.AMC.txt

Output Set: N:\CRF4\12082003\I936367.raw

L:1 M:259 W: Allowed number of lines exceeded, (1) GENERAL INFORMATION:
L:9 M:270 C: Current Application Number differs, Replaced Application Number
L:10 M:271 C: Current Filing Date differs, Replaced Current Filing Date